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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5484 OF 2006

Bhupendra Jagjivandas Parekh Petitioner
versus
Sunil Gajanan Kulkarni & others Respondents

Mr.S.J.Rairkar for petitioner.
Mr.V.A.Thorat i/by N.V.Gangal for respondent Nos. 1 & 2

CORAM : A.S.OKA, J.
DATE : 09th March 2007

PC :

1. Heard learned advocate for the petitioner. An application at Exhibit-255 was made by the petitioner in execution proceedings raising various objections to the execution of the decree passed in Special Civil Suit No.293 of 1970. The said application has been rejected. In the said application at Exhibit-255 made by the petitioner, he claimed to be a third party. He claimed that he is in possession of the property on the basis of agreement for sale executed by original defendant no.8 (judgement debtor no.8). Prayer in the application was that he may be implemented as a party judgement debtor. The said application has been rejected by order dated

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17th January 2006.

2. The learned advocate for the petitioner placed reliance on the decision of Supreme Court in the case of Brahmdeo Choudhary Vs. Rishikesh Prasad Jaiswal and another reported in 1997(1)-Mh.L.J.818 and submitted that once an objection was raised by the petitioner as a third party, adjudication as contemplated by Rule 97 read with Rule 101 of Order XXI of Code of Civil Procedure ought to have been made. He submitted that without making any adjudication by a cryptic order, the application at Exhibit-255 has been rejected. He stated that the finding recorded by the Executing Court that the judgement debtor no.8 had received the entire amount of her share was not at all warranted. He submitted that the Executing Court ought to have made a detailed adjudication after giving an opportunity to the parties to lead evidence. He submitted that the Executing Court had denied the opportunity to the petitioner to establish his case.

3. I have considered the submissions made by the learned advocate for the petitioner. It is not in dispute that the petitioner is claiming on the basis of an agreement for sale executed in his

favour by original defendant no.8 (judgement debtor no.8). It is also not in dispute that the agreement for sale has been executed after the decree was passed. An observation has been made in the impugned order that the petitioner is claiming through the judgement debtor i.e. judgement debtor no.8.

4. On his own showing, the petitioner is claiming on the basis of an agreement for sale executed by the judgement debtor. Under section 54 of the Transfer of Property Act, 1882, an agreement for sale does not create any interest in the property. Even assuming that any interest was created in favour of the present petitioner, it is obvious that he is claiming through the judgement debtor no.8 as the only source of right claimed by him is through the judgement debtor no.8. Therefore, the learned Trial Judge has rightly observed that the petitioner is claiming through the judgement debtor. In view of sub rule 2 of Rule 98 of Order XXI of the said Code, no fault can be found with the rejection of application at Exhibit-255. The petitioner according to his own case is claiming through the judgement debtor.

5. The petitioner has invoked extraordinary remedy under Article 227 of the Constitution of India. The jurisdiction under Article 227 of the Constitution of India cannot be invoked to interfere with each and every illegal order. It is true that the learned Judge has not allowed the parties to lead evidence. However, no interference can be made as the petitioner is admittedly claiming through a judgement debtor.

6. It must be noted here that the petitioner in his capacity as a constituted attorney of the legal representatives of the judgement debtor no.8 has filed a separate application before the Executing Court which has been decided by a separate order dated 17th January 2006. The said order is not subject matter of challenge in this writ petition. Notwithstanding the observation made in the impugned order regarding alleged receipt of the entire amount of her share by the judgement debtor no.8, the question whether the judgement debtor no.8 had received the amount or not will have to be decided in appropriate proceedings.

7. Subject to the observations made above, the writ petition is rejected.

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(A.S.OKA, J.)